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EXAMINER

SCHNEIDER, CRAIG M

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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6
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8 *Ex Parte* RICHARD C. FUKSA and JUN ZHU
9

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11 Appeal 2009-009839
12 Application 10/752,651
13 Technology Center 3700
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16 Oral Hearing Held: Thursday, February 10, 2011
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19 Before WILLIAM F. PATE, III, STEFAN STAICOVICI and FRED A.
20 SILVERBERG, Administrative Patent Judges
21
22

23 ON BEHALF OF THE APPELLANT:
24

25 JAMES B. CONTE, ESQ.
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1 *The above entitled matter came on for oral hearing on*
2 *Thursday, February 10, 2011, commencing at 9:23 a.m., at the U.S. Patent*
3 *and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Lori*
4 *Allen, Notary Public.*

5
6 JUDGE PATE: Good morning, Mr. Conte.

7 MR. CONTE: Good morning, panel.

8 JUDGE PATE: We are up to speed on this case,
9 technology-wise, and we'd like to hear your arguments about patentability.

10 MR. CONTE: Okay. My key argument, gentlemen, is that if
11 you look at Claim 1 of our application, it requires that the pin that holds the
12 valve into the valve plate, sheers the valve plate as it is inserted into the hole.

13 The key argument that I am putting forth is that none of the
14 references cited by the Examiner show sheering. The primary reference
15 relied on by the Examiner for sheering is Miller. The Examiner points to
16 Figure 4-B, which has an undercut shoulder, but if you read the patent, there
17 are several instances that make it clear that structure is not used for sheering.

18 First, if you were to look at Figure 3 of Miller, you would see
19 that the configuration of the holes in which the dowel is supposed to fill, that
20 dowel fills all of the entirety of the hole. If there was sheering coming
21 down, that would create a block.

22 That is what my client wanted to do, which was eventually
23 block the -- cause sheering to block the pin from entering into the valve
24 plate. That would not work with Miller, because it would prevent the dowel

1 from fitting nicely in the drilled holes.

2 Miller at Column 1, lines 60 to 65, specifically says that the
3 component openings are designed to accept the dowel, which leads away
4 from sheering, and at Column 2, lines 26 to 28, it says the drill bit is
5 designed to create openings that the dowel will fit into. Again, that cuts
6 away from sheering.

7 At Column 4, lines 37 through 39, the drill bit is dictated by the
8 dimension of the drilled sections. The only mention of Figure 4-B is in a
9 single line that simply says here's a way the dowel could look. No mention
10 of sheering.

11 That is probably our key argument, that there is nothing in the
12 art to show sheering, and sheering was -- even if you were to say that
13 somehow there is sheering with that component, 4-B of Miller, it wouldn't
14 be picked up on by someone wanting to improve the valve of the primary
15 reference, Wise, because Wise has a head on top of the pin that prevents the
16 pin from going too far into the aperture that holds it.

17 The whole key of our invention was that our pin is constantly
18 pounded by a reciprocating diaphragm, and a way, the inventive way, of
19 keeping it going too far into the aperture is to have it sheered so the sheering
20 sort of prevents a block so it can't go down any further when it's getting
21 pounded on, and you can still have an aperture longer than the pin, so you
22 can just quickly insert it, you don't have to say well, make sure it stops,
23 because the pin will exactly be on the hole's floor. You can just quickly
24 shear it in there, and it stops enough to resist that pounding.

1 At most, someone looking at Miller -- Miller talks about press
2 fit, the need to press fit. At most, you would simply pick up well, maybe a
3 way to stop the pounding is a simple press fit, a tight fit between the
4 diameter of the hole and the diameter of the shank.

5 Moving on to Claim 2, an additional reason for allowability
6 with Claim 2 is again we specifically specify that the shank is a lesser
7 diameter than the hole, but the reference relied on by the Examiner again is
8 Miller, and Miller specifically says the opposite.

9 Miller specifically says in the application that the shank should
10 be larger than the diameter of the hole to have a press fit. Again, that
11 element is not met anywhere in any of the cited references.

12 With regard to Claim 3, quite frankly, I don't see any value of
13 arguing PEEK. If you were to find Claim 1 was false, I couldn't really sit
14 here and now argue for Claim 3.

15 Those are really my arguments.

16 JUDE PATE: Okay. Judge Silverberg?

17 JUDGE SILVERBERG: Quick question. Looking at Miller in
18 Column 5, it talks about the frictional forces, basically line 55. It talks about
19 the diameter, as you had stated, the diameter being greater in size than the
20 diameter of the openings, and it is held tightly by frictional force.

21 It says the step acts similar to a head of a nail.

22 MR. CONTE: Right. That would at most show -- head of a
23 nail. As I read that, the head of a nail could be slightly pounded into the
24 surface, but that is not going to sheer it off. At most what would happen

1 with that undercut shoulder is there is going to be a beveled reciprocating
2 hole that it's going to go around and because it's like this (Indicating), it will
3 anchor it like that. It's not going to sheer it.

4 If there was sheering, the dowel wouldn't fit in. You couldn't
5 get it in. You could not literally get that dowel into the holes. You would
6 destroy the -- part of the invention is the drill bits used to machine these
7 holes.

8 JUDGE SILVERBERG: Drill bits and machines the hole
9 initially, and then you would have the diameter of the shank being greater
10 than the diameter of the hole, so you can force fit --

11 MR. CONTE: It's perceived to be wood, so there will be some
12 compression of the wood, but it's not going to sheer off because if it would,
13 it would literally clog up the line of entry for the dowel, and there is
14 nowhere for it to go.

15 Only if you know you want that clogging, like we did, then you
16 would want sheering. Otherwise, you are going to wind up with what they
17 say, which is press fit. Even when they talk at 55, 4-A, that is concave, and
18 that is, I guess, so it won't break off, which is different than the convex,
19 which really is just if they were to make the dowel hole the same shape, it
20 would be something like this (Indicating), and it would go on like that
21 (Indicating), so it has a little bit more of an anchor.

22 It is not going to sheer it as it is being entered. Otherwise,
23 literally -- one of the objects of the invention at Column 1, line 40, was to
24 prevent deformation of the objects being joined by dowels.

1 The last thing they would want to do is start sheering off pieces
2 of wood for furniture and stuff. They want to have as little defamation as
3 possible.

4 I just think it reads too much into 4-B. There is simply not
5 enough evidence that sheers. There is a lot of commentary in the application
6 that it would not.

7 That's all I have to say.

8 JUDGE PATE: I have no further questions for you either. Do
9 you have a card for the Court Reporter?

10 MR. CONTE: I sure do.

11 JUDGE PATE: We are going to take this case under
12 advisement.

13 MR. CONTE: Thank you very much.

14 (Whereupon, at 9:32 a.m., the proceedings were concluded.)

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